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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/572,772	03/21/2006	Craig W. Lindsley	21370P	9436				
210 MERCK AND CO., INC P O BOX 2000 RAHWAY, NJ 07065-0907	7590 09/19/2007		<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">HAVLIN, ROBERT H</td></tr></table>		EXAMINER		HAVLIN, ROBERT H	
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			<table border="1"><tr><td>MAIL DATE</td><td>DELIVERY MODE</td></tr><tr><td>09/19/2007</td><td>PAPER</td></tr></table>	MAIL DATE	DELIVERY MODE	09/19/2007	PAPER	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/572,772

Applicant(s)

LINDSLEY ET AL.

Examiner

Robert Havlin

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-35 is/are pending in the application.
- 4a) Of the above claim(s) 34 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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**DETAILED ACTION**

**Status of the claims:** Claims 21-35 are currently pending. On 7/5/07 claims 1-20 were cancelled and claims 21-35 were newly presented.

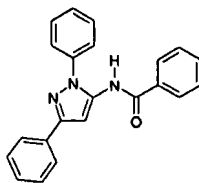
**Priority:** This application is a 371 of PCT/US04/30482 (09/17/2004) which claims benefit of 60/505,035 (9/23/2003).

**IDS:** The IDS dated 1/26/07 has been considered.

***Election/Restrictions***

1. Applicant's election with traverse of group I (drawn to products) in the reply filed on 7/5/07 is acknowledged. The traversal is on the ground(s) that there is no burden on the examiner to search the whole scope of the claims. This is not found persuasive because the claims as written include extremely broad variable definitions which give rise to compounds lacking a substantial structural element with any art recognized similarities, for example where R1, R4, and R5 can be substituted heterocycle, phenyl, alkyl, ..., etc.. Since the applicant has cancelled and submitted new claims, the product claims corresponding to group I are now claims 21-33.

The requirement is still deemed proper and is therefore made FINAL.



Applicant has also elected the species:

claims 21-35 read on the aforementioned species.

. Applicant further indicated that

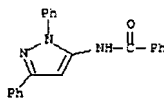
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The examiner has searched the elected species and found it to be unpatentable over the prior art. Therefore the claims are restricted to the elected species and subject matter not reading on the species or group I is withdrawn, presently claim 21-33, in part, and claims 34 and 35.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Simay et al. (HCAPLUS abstract with accession number 1981:442979 of Acta Chimica Academiae Scientiarum Hungaricae (1980), 105(2), 127-39).



Simay et al. teaches the compound:

which anticipates the elected species.

### ***Conclusion***

All claims are rejected.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Havlin whose telephone number is (571) 272-9066. The examiner can normally be reached on Mon. - Fri., 7:30am-5pm EST.

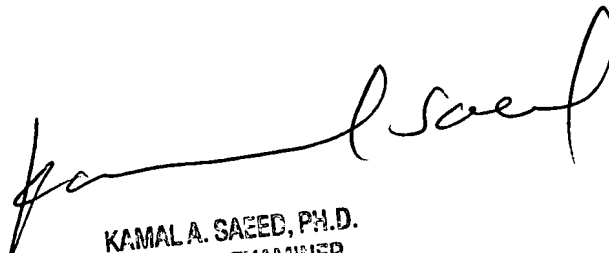
If attempts to reach the examiner by telephone are unsuccessful the examiner's supervisor, Joe McKane can be reached at (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert Havlin  
Examiner

RH



KAMAL A. SAEED, PH.D.  
PRIMARY EXAMINER